



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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5 U. S. Serial No.: 08/822,661
Filing Date: 03/24/97
Inventors: Jennings, et al
Assignee: Portland Software, Inc.
Title: DIGITAL CERTIFICATE

10 PETITION TO WITHDRAW HOLDING OF ABANDONMENT
UNDER RULE 37 CFR 1.181

4201 SW Vacuna
Portland, OR 97219
Date: May 24, 2000

15

Honorable Commissioner of Patents
and Trademarks
Washington, DC 20231

20

PETITION

25 Applicant/Assignee (hereafter "applicant") herewith petitions the Commissioner of Patents and Trademarks under 37 CFR §1.181 to withdraw or forestall any holding of abandonment in the above-captioned application based on the remarks set forth below, the affidavit provided herewith; and the evidence provided herewith and referenced herein.

30 Applicant further petitions the Commissioner of Patents and Trademarks to waive any fee required for this petition.

05/31/2000 JD0BLES 00000044 08822661

01 FC:122

FEE

130.00 0P

Applicant encloses herewith a check (\$130.00) in payment of the petition fee required.

REMARKS

5 INTRODUCTION:

Through recent telephone conversations with United States Patent and Trademark Office personnel applicant understands that a Notice of Allowance and Issue Fee Due was purportedly mailed on December 17, 1999 in the above-captioned application. Assuming such notice was in fact mailed December 17, 1999 the due date for paying the Issue Fee and submitting formal drawings would have been March 17, 2000.

10 Applicant did not timely receive any Notice of Allowance and Issue Fee Due.

15 Applicant first learned of the purported mailing of the Notice of Allowance and Issue Fee Due on May 12, 2000. It was, therefore, too late to pay the Issue Fee and submit formal drawings.

20 Accordingly, applicant anticipates that in the normal course of processing this application a holding of abandonment will result. The purpose of this petition is to withdraw or forestall as improper any holding of abandonment in this application.

FACTS:

A. Interaction With United States Patent and Trademark Office

25 This application was filed March 24, 1997. Two years and two months later, the United States Patent and Trademark Office issued the first Office Action in this application with a mailing date of May 20, 1999.

Applicant timely filed a response to this first Office Action with amendment and necessary extension fee on Monday November 22, 1999. On December 10, 1999 through several telephone conversations with Examiner Cangialosi it was agreed that applicant's response placed the application substantially in condition for allowance with the exception of claim 29. Claim 29 was 5 to be placed into condition for allowance by Examiner's Amendment. At this time applicant had no pending actions and next expected to receive a Notice of Allowance and Issue Fee Due along with a copy of the Examiner's Amendment.

In May 2000, changes in applicant's corporate personnel responsible for interacting with 10 outside patent counsel triggered a need to prepare a status letter for all outstanding matters handled by applicant's representative Keith A. Cushing (the undersigned and hereafter "applicant's representative"). In other words, applicant's in-house counsel requested that applicant's representative prepare a letter describing the status of all pending applications and issued patents. This request occurred during the week of week of May 8, 2000. Applicant's representative on May 15 11, 2000 drafted and mailed this status letter to applicant including reference to and description of the status of the subject application.

In connection with preparing this status letter, applicant's representative determined it necessary to prompt the Examiner into completing the Examiner's Amendment and placing the 20 application into condition for allowance. In a telephone call on May 12, 2000 between applicant's representative and Examiner Cangialosi, applicant first learned that Examiner Cangialosi had apparently completed his responsibilities in prompt fashion by filing an Examiner's Amendment and placing the case into condition for allowance. Applicant's representative further learned on May 12, 2000 by telephone conversation with Examiner Cangialosi and with the File Maintenance 25 clerk that while it was unclear from the United States Patent and Trademark Office computer status record it appeared a Notice of Allowance and Issue Fee Due was mailed December 17, 2000.

In a further telephone conversation on May 12, 2000, applicant's representative discussed the status of this application with Supervising Examiner D. Olms. Supervising Examiner D. Olms specifically requested that applicant's representative hold further action pending collection of the file for further inspection to determine if in fact a Notice of Allowance and Issue Fee Due was mailed. Applicant's representative was asked to call Supervising Examiner D. Olms on May 17, 2000 to see of the file had been found and inspected. Applicant's representative called Supervising Examiner D. Olms on May 17, 2000 and was informed that Supervising Examiner D. Olms had not yet gained possession of the application file. On May 23, 2000 Supervising Examiner D. Olms informed applicant's representative that he had obtained possession of the file and in fact it did appear that a Notice of Allowance and Issue Fee Due was mailed on December 17, 2000.

10
15 Applicant's representative received by FAX transmission on May 24, 2000 a copy of the Notice of Allowability, Examiner's Amendment, and Notice of Allowance and Issue Fee Due. The mailing dated indicated for these papers is December 17, 1999. Applicant encloses a copy of this FAX transmission.

B. Incoming Mail Processing by Applicant's Representative Keith A. Cushing

20 Applicant's representative regularly receives mail at the correspondence address for this application as follows:

25
Keith A. Cushing
Registered Patent Attorney

4201 SW Vacuna Street
Portland, Oregon 97219

In fact, applicant's representative received the first Office Action in this application at the above address.

5 Applicant's representative is a sole practitioner and is solely responsible for opening, processing, and docketing all incoming mail as well as managing file storage and providing responses to all United States Patent and Trademark Office correspondence.

10 5 Applicant's representative has no recollection of ever receiving a Notice of Allowance and Issue Fee Due in this application.

15 10 Applicant's representative as a regular procedure upon receipt of all correspondence from the United States Patent and Trademark Office performs the following steps:

20 15 1) pulls the application file from a file drawer labeled "PTO" holding all files for which no pending action is required;

25 20 2) enters in a docketing calendar the due date for any action required in light of the incoming correspondence such as a) for an Office Action the three-month date and the six-month date, or b) for a Notice of Allowance and Issue Fee Due the three-month date;

30 25 3) sends a copy of the correspondence to the applicant including discussion of due dates and steps or action items required; and

 4) places the file in a vertical file holder holding all files for which pending action is required.

25 On May 11, 2000 the application file for this application was in the "PTO" file drawer indicating to applicant's representative at the time of pulling the application file that no outstanding action was required.

30 Applicant's representative has inspected the docketing calendar and found no entries whatsoever, and specifically none on March 17, 2000, relative to allowance of this application. Applicant's representative provides herewith a photocopy of the pages of the above-referenced docketing calendar which would have included indication of a due date relative to the purported Notice of Issue Fee Due on March 17, 2000, i.e., for a Notice of Allowance and Issue Fee Due

mailed from the United States Patent and Trademark Office on December 17, 1999. The docketing calendar shows no indication of Issue Fee due for this application on March 17, 2000.

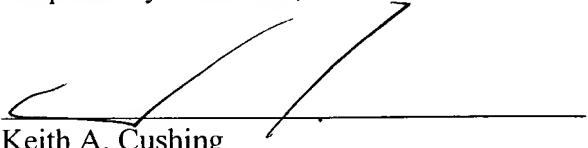
5 Applicant's representative has inspected the application file and found no correspondence to the client/applicant providing a copy of a Notice of Allowance and Issue Fee Due or discussing due dates or actions required in response to a Notice of Allowance and Issue Fee Due.

CONCLUSION:

10 Given the above regular and consistently applied incoming mail processing procedures and given applicant's representative having no recollection of receiving a Notice of Allowance and Issue Fee Due in this application, applicant concludes that no Notice of Allowance and Issue Fee Due for this application was received at the correspondence address for this application.

15 Applicant respectfully requests, therefore, that any holding of abandonment of this application be withdrawn.

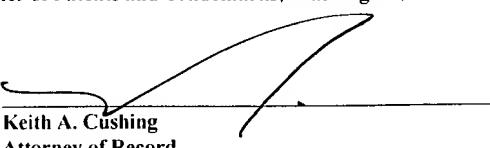
20 Respectfully submitted,

25 
Keith A. Cushing
Reg. No. 32,407

CERTIFICATE OF MAILING

30 I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the US Postal Service as First Class Mail, in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, DC 20231, on the date indicated below.

35 Date 5-24-2000


Keith A. Cushing
Attorney of Record
Reg. No. 32,407



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AFFIDAVIT IN SUPPORT OF

20 PETITION TO WITHDRAW HOLDING OF ABANDONMENT
UNDER RULE 37 CFR 1.181

25 The undersigned represents applicant/assignee Portland Software, Inc. in the above-captioned United States Patent application.

30 This application was filed March 24, 1997. Two years and two months later, the United States Patent and Trademark Office issued the first Office Action in this application with a mailing date of May 20, 1999.

35 Applicant timely filed a response to this first Office Action with amendment and necessary extension fee on Monday November 22, 1999. On December 10, 1999 through several telephone conversations with Examiner Cangialosi it was agreed that applicant's response placed the application substantially in condition for allowance with the exception of claim 29. Claim 29 was to be placed into condition for allowance by Examiner's Amendment. At this time applicant had no pending actions and next expected to receive a Notice of Allowance and Issue Fee Due along with a copy of the Examiner's Amendment.

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Registered Patent Attorney
4201 SW Vacuna Street
Portland, Oregon 97219

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50 Applicant's representative has inspected the application file and found no correspondence to the client/applicant providing a copy of a Notice of Allowance and Issue Fee Due or discussing due dates or actions required in response to a Notice of Allowance and Issue Fee Due.

55 I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements

were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

5

Respectfully submitted,

10
Keith A. Cushing
Reg. No. 32,407

15

CERTIFICATE OF MAILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the US Postal Service as First Class Mail, in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, DC 20231, on the date indicated below.

20

Date

5-24-2000

25

Keith A. Cushing
Attorney of Record
Reg. No. 32,407

March 13-15

February 2000						March 2001					
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